

Council Regulation (EC) No 40/94 of 20 December
1993 on the Community trade mark (repealed)

TITLE IX

PROCEDURE

SECTION 1

GENERAL PROVISIONS

Article 73

Statement of reasons on which decisions are based

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

Article 74

Examination of the facts by the Office of its own motion

- 1 In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
- 2 The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 75

Oral proceedings

- 1 If the Office considers that oral proceedings would be expedient they shall be held either at the instance of the Office or at the request of any party to the proceedings.
- 2 Oral proceedings before the examiners, the Opposition Division and the Administration of Trade Marks and Legal Division shall not be public.
- 3 Oral proceedings, including delivery of the decision, shall be public before the Cancellation Division and the Boards of Appeal, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 1. (See end of Document for details)

Article 76

Taking of evidence

1 In any proceedings before the Office, the means of giving or obtaining evidence shall include the following:

- a hearing the parties;
- b requests for information;
- c the production of documents and items of evidence;
- d hearing witnesses;
- e opinions by experts;
- f statements in writing sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.

2 The relevant department may commission one of its members to examine the evidence adduced.

3 If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.

4 The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

Article 77

Notification

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the Implementing Regulation, or of which notification has been ordered by the President of the Office.

[^{F1}Article 77a

Revocation of decisions

1 Where the Office has made an entry in the Register or taken a decision which contains an obvious procedural error attributable to the Office, it shall ensure that the entry is cancelled or the decision is revoked. Where there is only one party to the proceedings and the entry or the act affects its rights, cancellation or revocation shall be determined even if the error was not evident to the party.

2 Cancellation or revocation as referred to in paragraph 1 shall be determined, ex officio or at the request of one of the parties to the proceedings, by the department which made the entry or took the decision. Cancellation or revocation shall be determined within six months from the date on which the entry was made in the Register or the decision was taken, after consultation with the parties to the proceedings and any proprietor of rights to the Community trade mark in question that are entered in the Register.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 1. (See end of Document for details)

3 This Article shall be without prejudice to the right of the parties to submit an appeal under Articles 57 and 63, or to the possibility, under the procedures and conditions laid down by the Implementing Regulation referred to in Article 157(1), of correcting any linguistic errors or errors of transcription and obvious errors in the Office's decisions or errors attributable to the Office in registering the trade mark or in publishing its registration.]

Textual Amendments

- F1** Inserted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\).](#)

Article 78

Restitutio in integrum

1 The applicant for or proprietor of a Community trade mark or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit *vis-à-vis* the Office shall, upon application, have his rights reestablished if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any right or means of redress.

2 The application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided in Article 47 (3), third sentence, shall be deducted from the period of one year.

3 The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for re-establishment of rights has been paid.

4 The department competent to decide on the omitted act shall decide upon the application.

[^{F25} This Article shall not be applicable to the time limits referred to in paragraph 2 of this Article, Article 42(1) and (3) and Article 78a.]

6 Where the applicant for or proprietor of a Community trade mark has his rights re-established, he may not invoke his rights *vis-à-vis* a third party who, in good faith, has put goods on the market or supplied services under a sign which is identical with or similar to the Community trade mark in the course of the period between the loss of rights in the application or in the Community trade mark and publication of the mention of re-establishment of those rights.

7 A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or proprietor of a Community trade mark within a period of two months as from the date of publication of the mention of re-establishment of those rights.

8 Nothing in this Article shall limit the right of a Member State to grant *restitutio in integrum* in respect of time limits provided for in this Regulation and to be observed *vis-à-vis* the authorities of such State.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 1. (See end of Document for details)

Textual Amendments

- F2** Substituted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

f^{F1} Article 78a

Continuation of proceedings

1 An applicant for or proprietor of a Community trade mark or any other party to proceedings before the Office who has omitted to observe a time limit vis-à-vis the Office may, upon request, obtain the continuation of proceedings, provided that at the time the request is made the omitted act has been carried out. The request for continuation of proceedings shall be admissible only if it is presented within two months following the expiry of the unobserved time limit. The request shall not be deemed to have been filed until the fee for continuation of the proceedings has been paid.

2 This Article shall not be applicable to the time limits laid down in Article 25(3), Article 27, Article 29(1), Article 33(1), Article 36(2), Article 42, Article 43, Article 47(3), Article 59, Article 60a, Article 63(5), Article 78, Article 108, or to the time limits laid down in this Article or the time limits laid down by the Implementing Regulation referred to in Article 157(1) for claiming priority within the meaning of Article 30, exhibition priority within the meaning of Article 33 or seniority within the meaning of Article 34 after the application has been filed.

3 The department competent to decide on the omitted act shall decide upon the application.

4 If the Office accepts the application, the consequences of having failed to observe the time limit shall be deemed not to have occurred.

5 If the Office rejects the application, the fee shall be refunded.]

Textual Amendments

- F1** Inserted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

Article 79

Reference to general principles

In the absence of procedural provisions in this Regulation, the Implementing Regulation, the fees regulations or the rules of procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognized in the Member States.

Status: Point in time view as at 27/12/2004.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 1. (See end of Document for details)*

Article 80

Termination of financial obligations

1 Rights of the Office to the payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.

2 Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

3 The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgement has acquired the authority of a final decision.

Status:

Point in time view as at 27/12/2004.

Changes to legislation:

There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 1.